

MT Fish, Wildlife & Parks

Conservation Easement Amendments/Restatements

PURPOSE:

This policy establishes the acceptable requirements and procedures for amending/re-stating conservation easements (CE).

POLICY:

MT Fish, Wildlife & Parks (FWP) and/or landowners may request restatements to modify a FWP conservation easement. It is the policy of FWP that all restatements must meet the following **FWP Amendment/Restatement Standards** (FWP Standards). All easement restatements must:

- *Be consistent with the FWP mission **and**,*
- *Be consistent with the documented purposes of the conservation easement **and**,*
- *Clearly serve the public interest **and**,*
- ***Not** result in private inurement or impermissible benefit **and**,*
- ***Not** create a Conflict of Interest on the part of FWP or its insiders **and**,*
- ***Not** be apt to set unfavorable legal precedent for future restatement requests **and**,*
- *Comply with any funding or grant requirements related to the original attainment of the easement or subsequent land-management efforts **and**,*
- *Result in a net positive effect on the purposes and conservation values of the Easement.*

***The last bullet does not apply to those cases where the amendment/re-statement tool is used solely for repairing drafting errors or for clarifying ambiguous terms, so long as those cases of correction then result in NO effective change on the Purposes and/or Conservation Values. ***

The following are examples of acceptable reasons for amending a conservation easement so long as they meet the outlined FWP Standards above:

- *Upgrade or clarify language and/or format,*
- *Correct omissions, oversights or errors in the original document,*
- *Allow an unanticipated but acceptable use,*
- *Resolve a minor violation,*
- *Modify an easement document's format,*
- *Add new provisions to strengthen the protections or restrictions of the easement,*
- *Add additional acreage to an easement,*
- *Resolve condemnation proceedings,*
- *Relieve an unnecessary monitoring burden.*

Further, it is the policy of FWP to adhere to the following procedural requirements with relation to evaluating any and all conservation easement restatement proposals unless otherwise specified in the terms of the conservation easement itself. Where a conflict exists between the conservation easement terms and this Policy, the conservation easement terms apply.

1. Landowner initiated restatement requests must be delivered to the appropriate FWP Division Administrator in writing. The Department will strive to respond to all landowner requests

within 30 days of receipt of a written request. The response will acknowledge the request and provide either of the following:

- *Acceptance of the proposal, and a request to further negotiations,*
- *Rejection of the proposal and reasoning for that rejection which will be based on the FWP Standards outlined in this document,*
- *An explanation for why additional time is necessary for the evaluation of a proposal.*

While FWP will strive to respond to all restatement requests accordingly, under no circumstances will a failure to respond within the 30-day window be construed as approval for any restatement request.

2. Upon written receipt of a restatement request the Division Administrator will determine its worthiness and either grant or reject preliminary approval for negotiating any restatements if appropriate. If however, the restatement request involves the acquisition of an interest in real property then the department must receive the FWP Commission's consent- See Paragraph 7 below.
3. If a request receives preliminary approval, the Conservation Easement Land Steward will convene a **FWP Conservation Easement Amendment Committee** (FWP Amendment Committee) who will deliberate FWP internal interests and set the ground rules for negotiating restatement provisions with the interested Land Owner or Land Owner's representative. For the purposes of these meetings the Conservation Easement Land Steward will provide the FWP Amendment Committee with the written restatement request and all other relevant documentation (CE Terms, Stewardship Background, Appropriate Maps).

Disagreements among the committee members will be resolved by the Division Administrator.

The FWP Amendment Committee must consist of the following representatives:

- *Minimum of 1 representative from the Legal Unit;*
 - *Minimum of 1 representative from the Lands Unit;*
 - *Minimum of 2 representatives from the Division or Bureau assigned to manage the conservation easement. The two will consist of one administrative representative from the Helena Office, and one field representative from the Regional Office.*
4. Only those proposals that meet all requirements of the FWP Standards will be considered for restatement. It is the responsibility of the FWP Amendment Committee to review proposals and make determinations of compliance with each listed standard, and then to defend and record those determinations within the appropriate CE stewardship files.
 5. Once the FWP Amendment Committee has finalized negotiations with the Land Owner, and has determined that a restatement meets FWP Standards, a formal recommendation for final approval will be made to the appropriate Division Administrator. Upon review, the Division Administrator will either:
 - a. Grant the recommendation final approval;
 - b. Refer the recommendation to the FWP Commission for final approval if appropriate;

- c. Return the recommendation to the FWP Amendment Committee for additional negotiations; or
 - d. Dismiss and reject the recommendation.
- 6. In those cases not involving FWP's interest in real property, the Division Administrator retains the authority to approve, reject or defer to the FWP Commission for all submissions of restatement request.
- 7. All amendment/restatement proposals that involve an acquisition of an interest in real property require the FWP Commission's consent-. For those restatement requests requiring FWP Commission involvement, the following steps are required:

- a. The FWP Amendment Committee and Division Administrator will organize a formal presentation of the land interest outlined within the restatement request that shall be presented to the FWP Commission for 'preliminary or conceptual approval' subject to meeting The Standards already outlined.

***** This step is required both for scenarios where real interest in land is considered within original restatement proposals, and also for scenarios where real interest in land results not from the original proposal, but from negotiations with landowners for those proposals that did not initially require FWP Commission involvement and had been previously authorized for preliminary approval by either a Division Administrator as detailed in this policy. *****

***** FWP Commission approval is required only for authorizing those portions of restatement proposals that involve FWP's interest in real acreage, and should NOT have bearing on any other negotiated conservation easement restatement terms unless specifically requested. *****

- b. If a proposal receives preliminary approval from the FWP Commission, representatives of the FWP Amendment Committee, the landowner and landowner representatives will commence/complete formal negotiations and drafting of a conservation easement restatement. Return to Paragraph 3 above.
 - c. Once the FWP Amendment Committee has finalized negotiations with the Land Owner, has determined that a restatement meets FWP Standards, and a draft restatement has been approved by the appropriate Division Administrator, a formal presentation will be made to the FWP Commission for those matters related to real property interest. Upon review, the FWP Commission will either
 - Grant the recommendation final approval;
 - Return the recommendation to the FWP Amendment Committee for additional negotiations; or
 - Dismiss and reject the recommendation.
- 8. All restatements receiving final approval are to be signed by both the landowner and the Director of MT Fish, Wildlife & Parks and then recorded with the appropriate County.

9. FWP will formally advise landowners negotiating conservation easement restatements with FWP that they are best served to obtain their own legal counsel and tax advice.
10. In some instances, FWP may be asked to approve an amendment to a conservation easements held by a non-profit organization, where FWP provided funding for the CE. In such cases, the department will apply this policy to our decision making process for approving proposed amendments brought to us by a third-party.

FWP will review this Policy and related procedures on a periodic basis to ensure that FWP is operating and evaluating conservation restatements according to the most recent legal standards and to ensure that FWP continues meeting the goals outlined here in.

Approved: Insert Date 3/31/10

A handwritten signature in black ink, appearing to read "De Maurer", is written over a horizontal line.

Director, MT Fish, Wildlife & Parks